



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 5618-99
5 September 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552
(b) SecNavInst 1900.7G

Encl: (1) DD Form 149 w/attachments
(2) CMC Memo 1741 MMSR-6J, 13 Mar 00
(3) CMC Memo 1001/1 MMEA-6, 31 Mar 00
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was retired by reason of physical disability, or, in the alternative, that he be awarded full separation pay in accordance with reference (b), rather than the half-pay he actually received.

2. The Board, consisting of Ms. Schnittman and Messrs. Bartlett and Ensley, reviewed Petitioner's allegations of error and injustice on 17 August 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner was evaluated by a medical board on 12 February 1998, and given diagnoses of major depressive disorder, chronic, severe, without psychotic symptoms; and bulimia nervosa, purging type. He disclosed a history of increasingly severe depressive symptoms beginning gradually and becoming problematic three to four years earlier. His

symptoms were a depressed mood, insomnia, anergy, anhedonia, loss of appetite, difficulty concentrating, and recurrent passive suicidal ideation without plan or intent. He denied that his symptoms had ever prevented him from fulfilling his duties, but stated he would have been more effective without the symptoms. He stated that concurrent with the development of the depressive symptoms, he had experienced a gradual but steady weight gain. He indicated that he had begun a pattern of bingeing on food, followed by purging, in 1984 or 1985, when placed in the weight control program. He gained 35 pounds after he reduced his purging behavior in January 1997. In the opinion of the medical board, Petitioner was unable to return to full duty, and recommended that the case be referred to the Physical Evaluation Board (PEB), which was accomplished on 12 May 1998. On 25 June 1998, the PEB suspended action on Petitioner's case because of pending disciplinary action being taken against him. He received nonjudicial punishment on 15 July 1998, for making a false official statement to a substance abuse counseling center counselor. On 15 September 1998, the PEB determined that Petitioner was fit for duty, apparently because he was not incapacitated by the bulimia, and his depressive symptoms had never prevented him from performing his duties. Petitioner rejected the finding of fitness, and requested reconsideration on 9 November 1998. His request, which was not accompanied by any new evidence, was denied on 16 November 1998. On or about 21 April 1999, Petitioner's request to reenlist for a period of two years was denied because he did not meet applicable height/weight/body fat standards, and was therefore unqualified for reenlistment. It was also noted in the denial message that Petitioner had not displayed the "INTEGRITY EXPECTED OF A SNCO OF SNM's RANK AND YEARS OF SERVICE RESULTING IN AN NJP." Petitioner was discharged from the Marine Corps on 30 April 1999 by reason of completion of required active service, having completed 16 years, 10 months and 29 days of active service, with entitlement to one-half separation pay. He was assigned a reenlistment code of RE-3P, to indicate that he did not meet physical standards for reenlistment.

d. Petitioner contends, in effect, that he had been on the weight control program on three occasions, but the last time was in 1986. In 1996, he was threatened with discharge from the Marine Corps because of his weight, which caused him to become desperate for help. He states he was told by a substance abuse counselor (SAC) that if he requested treatment for his weight, he would be discharged from the Marine Corps because he had previously been on weight control, but that if he referred himself for alcohol dependence treatment, he would get into a treatment center, and that once there, he could enter the overeaters program. He followed that advise. He states that despite his significant progress in the program, he was told that he would have 10 days upon returning to his unit to meet weight standards or he would be discharged. This resulted in a return to purging behavior. Subsequently, he was reexamined by counselors at the treatment center and given a diagnosis of bulimia nervosa. As that condition is not treatable at a level III rehabilitation facility, he was dropped from the program three days prior to graduation. Thereafter, he was described as a rehabilitation failure, which he maintains is not true; rather, he was dropped from the program because treatment for his condition was not authorized. He contends that he suffered from a "...pathological condition requiring medical and psychiatric treatment." He notes that on 17 December 1996, a navy medical officer indicated that a medical board was

in order because bulimia is an unfitting condition; however, no medical board was convened. (Note: the record actually indicates that the physician felt Petitioner would require a medical board in the event he were not discharged for failure of a level III treatment program.) Petitioner maintains that he was recommended for medical board consideration on 3 February 1997, but once again no action was taken to convene a board. A close examination of the record indicates, however, that the recommendation was actually made on 3 February 1998 rather than 3 February 1997. As indicated above, a medical board met nine days later. Petitioner notes that charges of making a false official statement were referred to a special court-martial during April 1998, twenty-two months after the incident took place. He believes that the referral can only be viewed as a "scare tactic", which allowed his command to report to the PEB that he was pending disciplinary. He maintains "it is a known fact that this report substantially reduces favorable action by the PEB." He states that he ultimately agreed to accept nonjudicial punishment, against his counsel's advice, "...in order to stop the harassment from the command. It should be noted that this decision ultimately resulted in the integrity comments on the reenlistment denial." He reminds the Board that he was advised to make the [false] statement by a person in a position of authority. He characterizes the finding of the PEB as "bizarre", and complains that his request for reconsideration was denied prematurely, before his time to respond had expired. He notes that on 22 December 1998, he was diagnosed with high blood pressure, which would preclude his immediate discharge, as well as tachycardia and sleep apnea, and he was found not medically qualified for reenlistment on that date. He contends that he was mistreated, and the fact that he was discharged with half separation pay, in the amount of \$18,000, after giving 17 years of good service to the Marine Corps, is "unconscionable". He believes he was treated as a second class citizen because he had a medical and psychological condition. He requests, "at a minimum", he should have been placed on the Temporary Disability Retired List with a 50% rating. In the alternative, "at a bare minimum", he requests full separation pay.

e. In correspondence attached as enclosure (2), the Board was advised by the Head, Separation and Retirement Branch, Headquarters, U.S. Marine Corps (HQMC), in effect, that Petitioner was found fit for duty by the PEB, discharged under proper authority, and awarded one-half separation pay in accordance with current laws and regulations. He recommended that Petitioner's request be denied.

f. In correspondence attached as enclosure (3), the Board was advised by the Assistant Head, Enlisted Assignment Branch, Headquarters, USMC, in effect, that in order to receive full separation pay, a Marine must be fully qualified for reenlistment. Petitioner did not qualify for reenlistment because he did not meet height/weight/body fat standards.

g. SECNAVINST 1900.7G, paragraph 8(a)(8), provides, in effect, that officers not fully qualified for retention who meet basic eligibility criteria for non-disability separation pay, i.e., honorable characterization of service, at least five years of active duty, and agreement to complete a three year reserve obligation, or constructive credit therefor if not eligible for reserve appointment, are limited to one-half separation pay if separated for failure to conform to prescribed weight standards. Paragraph 8b provides, in effect, that the

Secretary of the Navy may award full separation pay to members separated under the conditions in paragraph 8a, in extraordinary instances when the specific circumstances of the separation and overall quality of the member's service have been such that denial of such pay would be clearly unjust. As an example, a member with a congenital or hereditary disease who is involuntarily separated for convenience of the Government, and who is not normally eligible for full separation pay may be considered by the Secretary for full separation pay.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner has submitted insufficient relevant evidence to demonstrate that he was unfit by reason of physical disability at the time of his discharge from the Marine Corps. It does not appear that his performance of duty was adversely affected by his depressive disorder, bulimia, sleep difficulties, hypertension or mild tachycardia. It further concludes that he would have been fully capable of completing twenty years of active service had he conformed to applicable weight standards and been permitted to reenlist.

The Board believes that the weight gain Petitioner had during the latter part of his career in the Marine Corps may have been related to his depressive disorder and bulimia, although not caused by either condition. It concludes that his failure to conform to weight standards was significantly mitigated by the effects of nervous disorders. Given his lengthy, outstanding service to the Marine Corps, and the aforementioned mitigating factor, it would be in the interest of justice for the Secretary to award him full separation pay.

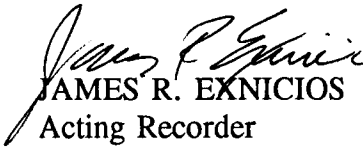
In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that the Secretary of the Navy directed that he be paid full separation pay in connection with his discharge from the Marine Corps on 30 April 1999.
- b. That the remainder of the request for correction of naval record be denied.
- c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

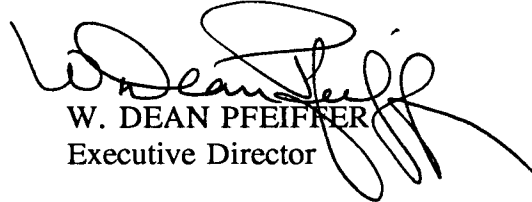
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



JAMES R. EXNICIOS
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER
Executive Director

Reviewed and approved:



Joseph G. Lynch
Assistant General Counsel
(Manpower & Reserve Affairs)